CF0000060171

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 1426 OF 1998

APPELLANT: (IN JAIL)

Amrit Yadav S/o Chait Ram Yadav, aged 24 years, Resident of Jalampur, Near Deewan Talab, Dhamtari, Police Station - Dhamtari, Tahsil-Dhamtari, District - Raipur (M.P.)

9927
1426
Samar Sinha
Advocate

VERSUS

RESPONDENT: State of Madhya Pradesh

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE,1973.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(96)

आदेश पत्रक

मामला क्रमांक Cr.A.No.1426/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

07-12-2005

Ku. J.A. Khan, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral.

By this appeal under Section 374 (2) of the Cr.P.C. accused/appellant Amrit Yadav has questioned the legality of judgment of conviction and sentence dated 25th April 1998 passed by the Additional Sessions Judge, Dhamtari, in S.T. No.413/97 whereby the learned Additional Sessions Judge, Dhamtari after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that in the morning of 7-8-97 at about 9.15 am Panch Bai (deceased) along with her brother Ashok and one lady of Lohrasi went to deposit the Bidi in the Dhanitola branch of the bidi company. When they were returning after depositing the bidi in the branch, Panch Bai and the lady went to purchase Namkeen. Panch Bai and the other lady were ahead of Ashok, brother of Panch Bai. The persons who were working in the agricultural field of Dewangan raised the cries "Gharwala Dadiwala Ladka" has killed. Ashok threw Namkeen and saw that the sister was lying on the earth

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(37)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and accused Amrit Yadav was attacking with the knife. On seeing him, Amrit Yadav started running. When he reached near his sister, he saw that blood was oozing out of the neck and she died. On receiving this report, PW-5 Sahdeo Thakur, Sub Inspector, registered the F.I.R. Ex.-P/1 at Sr. No.258/97 under Section 302 of the I.P.C. and merg intimation Ex.-P/7. He left for the scene of occurrence and prepared the site plan Ex.-P/8. He took into possession the blood stained soil and plain soil from the place of occurrence under Ex.-P/9. He also took into possession the broken pieces of glass bangles under Ex.-P/10. PW-11 D. K. Sharma, Inspector, after giving notice Ex.-P/2, prepared Panchanama of the dead body Ex.-P/3 and sent the dead body of the deceased for postmortem under Ex.-P/4 to the Government Hospital, Dhamtari. He also took into possession the viscera and the clothes of the deceased under Ex.-P/14 and sent the items to the Forensic Science Laboratory for examination. PW-12 B.S. Jagrut, Sub Inspector, took into possession the knife under Ex.-P/17 as also the clothes of the accused from the possession of the accused, gave a memo Ex.-P/18 for medical examination of accused Amrit and also gave a memo Ex.-P/19 for the examination of Baniyan and the knife. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Dhamtari who in turn committed the case to the Sessions Court, Raipur from where learned Additional Sessions Judge, Dhamtari received the case on transfer for trial.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to prove the offence against the accused/appellant examined 15 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he has not murdered Panch Bai. She has been murdered by Komal Dewangan. He further stated that he is innocent and he has been falsely implicated in the crime on account of animosity. On the fateful day and time, when he saw from his residence that Komal Dewangan, husband of Panch Bai, was running carrying a knife in his hand and his clothes were stained with blood, therefore, he chased him and snatched the knife from him, and in that process, he also received the injuries. On account of animosity with the father and brother of Panch Bai they have implicated him in the crime. He also produced one witness namely Kriparam Yadav in his defence. Learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused/appellant in the manner as mentioned in the earlier part of this judgment.

We have heard Ku. J.A. Khan, counsel for the appellant and Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

The fact of homicidal nature of death of Panch Bai has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of eyewitness namely, PW-1 Ashok Dewangan and

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(39)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the evidence of PW-9 Dr. Ramesh Tripathi, who conducted the postmortem on 7-8-97, and has stated that there were 6 incised wounds and one abrasion on the body of the deceased. The cause of death was shock as a result of excessive bleeding and the nature of death was homicidal. Therefore, in view of the above evidence of eyewitness and the medical evidence, it is established that the death of Panch Bai was homicidal in nature.

As far as the question of involvement of the accused/appellant in committing the murder of Panch Bai is concerned, learned counsel for the accused/appellant argued that the accused/ appellant has been falsely implicated in the crime on account of animosity. In fact, husband of Panch Bai Komal Dewangan attacked and murdered the deceased. The accused/appellant snatched the knife from Komal Dewangan. While drawing the attention of the Court towards the F.I.R. she argued that the persons standing in the agricultural field of Dewangan said that "Gharwala Dadiwala Ladka" has murdered. She further argued that PW-1 Ashok was not the eyewitness to the incident.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant we have perused the evidence available on record. PW-1 Ashok, who is the brother of the deceased and lodged the report Ex.-P/1 at the Police Station, has stated that on

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(40)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the fateful day after depositing the bidi in Dhanitola factory, Panch Bai and the other lady of Lohrasi were returning and they were ahead of him. When they reached near the house of Sukhram, he saw that accused Amrit came with a knife and assaulted Panch Bai with the said knife on her waist, chest and neck, as a result of which she fell down. He ran towards the accused to catch him, his brother Badri was also with him, they chased the accused, on the way, his second brother Dwarika also met. His father also met on the way and all the 4 of them chased the accused, who entered the Police Station, Dhamtari. They also entered the Police Station, informed them about the incident and lodged the report Ex.-P/1. The police persons came on the spot and prepared Panchanama. PW-2 Shiv Prasad has turned hostile but he has stated that Panch Bai and Laxmin were ahead. Ashok was on cycle and he was sitting behind him. He had not seen anybody assaulting Panch Bai. PW-6 Laxmin Bai, who was with Panch Bai as per the prosecution case, has stated that after depositing the bidi with the Dhanitola office of the bidi company, she along with Ashok and Shiv came out. Panch Bai also deposited the bidi and after taking Namkeen, she was ahead of Panch Bai because she was in hurry to reach her house. Panch Bai was following her. All of a sudden, the accused came and he pushed Panch Bai, as a result of which she fell down, on which Panch Bai started raising the cries. She became frightened and ran away. She saw the accused pushing Panch Bai. After declaring her hostile, on cross-examination by the Public

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(41)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Prosecutor, she further stated that she saw the accused assaulting Panch Bai with a knife. Laxman father of the deceased has been examined as PW-7. He has stated that on the fateful day he was sitting in the Kachhari. At about 10 am he saw that the accused was running carrying a knife in his hand stained with blood and was crying that he has murdered Panch Bai. He ran towards the Police Station. His sons Ashok, Badri and Dwarika were chasing him. He also went along with his sons to the Police Station. Thereafter, the Police went to the scene of occurrence. PW-8 Badri who is the brother of the deceased has also corroborated the above fact. In the first information report Ex-P/1 which was lodged by PW-1 he has categorically stated that on hearing the cries of the persons who were working in the field of Dewangan and he saw that the accused was assaulting Panch Bai with a knife.

It is true that most of the witnesses are brother and father of the deceased. Being close relative their evidence needs close scrutiny in order to find out the truth. The evidence of PW-1 Ashok, PW-7 Laxman and PW-8 Badri has been corroborated by an independent witness namely PW-6 Laxmin Bai who at the time of incident was with Panch Bai has also stated that she saw the accused pushing Panch Bai and assaulting her with a knife. Witnesses Ashok and Laxman have stated that when they were chasing the accused, the accused entered the Police Station Dhamtari carrying a knife in his hand. This fact has been corroborated by the evidence of PW-5 Sahdeo Thakur, sub inspector,

[पीछे देखिये

उच्च न्यायालये, छत्तीसगढ़, बिलासपुर

(42)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

who was in the Police Station. In the cross-examination by the defence counsel, he has stated that the accused came in the Police Station carrying a knife in his hand. The seizure memo of the knife Ex.-P/17 further lends support to the fact that the knife and clothes of the accused were seized in the Police Station, Dhamtari itself on 7-8-97 at 11.30 am within one and half our of the incident. Therefore, the evidence of Laxmin Bai and PW-5 Sahdeo Thakur and recovery of the knife from the accused in the Police Station itself where he came along with knife corroborates the prosecution case. The medical evidence of Dr. Ramesh Tripahti (PW-9) also corroborates the version of eyewitness as 6 injuries were found on the body of the deceased. The accused also received the injuries in the process which were examined by PW-15 Dr. A. Rashid on the same day.

In view of the above clinching and legal evidence, we do not find any substance in the arguments of learned counsel for the accused/appellant that the accused/appellant has been falsely implicated in the crime. Nothing has been brought on record in the cross-examination or otherwise as to why the Police Officers will unnecessarily falsely implicate the accused/appellant when the crime was not committed by him.

In view of the above evidence, the evidence of DW-1 Kriparam Yadav has rightly been rejected by the trial Court.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(43)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	In view of the foregoing discussion, we do not find any ground to interfere with the finding of the trial Court. The finding of the trial Court is based on legal evidence. In the result, the appeal has no merit, same is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **V.K. Shrivatava** **Judge**

[पीछे देखिये

10.2.06 10.2.06